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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,500	06/24/2003	Prasad Miriyala	CISCP109C1/315361	3636
22434	7590	11/21/2008		
BEYER WEAVER LLP				
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EXAMINER				
SOL, ANTHONY M				
ART UNIT		PAPER NUMBER		
2419				
MAIL DATE		DELIVERY MODE		
11/21/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/603,500

Applicant(s)

MIRIYALA, PRASAD

Examiner

Anthony Sol

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

- Applicant's Amendment filed 8/11/2008 is acknowledged.
- Claims 1, 15, 20, 23, 24, 42, 44, 45, and 46 have been amended.
- Claims 47-53 have been added.
- Claims 1-2 and 4-53 are pending.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed **terminal disclaimer** in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-2 and 4-53 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 3, 2, 4-42, 40, 14, 14, 9, 8, 14, 22, 22, 22, 22, and 55, respectively, of U.S. Patent No. 6,618,377. Although the conflicting

claims are not identical, they are not patentably distinct from each other for the following reasons:

Regarding claim 1,

Claim 3 of the '377 patent is directed to a method for providing a network service, whereas independent claim 1 is directed to a network system for providing a network service, which is an obvious variation since the steps of Claim 3 of the '377 patent would clearly be performed when the system or apparatus of present claim 1 is operating and the system or apparatus is clearly required in order to perform the recited steps of Claim 3 of the '377 patent. Claim 1 further recites promoting the second member of the standby group of network devices to active status from standby status such that the second member provides the network service by handling packets destined for the shared non-ATM network address. It is obvious to promote the second member of the standby group of network devices to active status since it has already been identified as the device to provide the service and it also obvious that the second member would be now handling the packets destined for the shared non-ATM network address now that the second member is in active status instead of the first member which is determined to be not available.

Regarding claim 15,

Claim 15 of the '377 patent is directed to a method of providing a network service, whereas independent claim 15 is directed to a network system for providing a network service comprising a server, which is an obvious variation since the steps of

Claim 15 of the '377 patent would clearly be performed when the system or apparatus of present claim 15 is operating and the system or apparatus is clearly required in order to perform the recited steps of Claim 15 of the '377 patent. . Claim 15 further recites enabling the server to select the first network device to handle packets addressed to the non-ATM network address that is shared with other members of the standby group. It is obvious to enable the server to select the first network device to handle packets addressed to the non-ATM network address since the first network device has already been determined and sent a notification identifying it to receive one or more packets destined for the shared non-ATM network address.

Regarding claim 20,

Claim 20 of the '377 patent is directed to a method of using a network device in an ATM network, whereas independent claim 20 is directed to an ATM network comprising a server, which is an obvious variation. Further, claim 20 of the '377 patent recites that the network device has at least one non-ATM network address, whereas claim 20 recites that the network device has at least one ATM network address. It is obvious that the network device of claim 20 has at least one ATM network address since the network device is in the ATM network.

Regarding claim 23,

Claim 23 of the '377 patent is directed to a server for use in an ATM network, whereas independent claim 23 is directed to an ATM network comprising a server,

which is an obvious variation. Further, claim 23 of the '377 patent recites that the network device has at least one non-ATM network address, whereas claim 23 recites that the network device has at least one ATM network address. It is obvious that the network device of claim 23 has at least one ATM network address since the network device is in the ATM network.

Regarding claim 24,

Claim 24 of the '377 patent is directed to a server for use in an ATM network, whereas independent claim 24 is directed to an ATM network comprising a server, which is an obvious variation. Further, claim 24 of the '377 patent recites that the one or more processors perform various functions, whereas claim 24 recites that the server, which includes one or more processors, performs the same various functions. It is obvious that the one or more processors included in the server actually perform the various functions. In addition, claim 24 further recites a memory, which is an obvious variation.

Regarding claim 33,

Claim 33 of the '377 patent is directed to a network device for use in an ATM network, whereas independent claim 33 is directed to an ATM network comprising a plurality of network devices, which is an obvious variation.

Regarding claim 42,

Claim 42 of the '377 patent is directed to a computer-readable medium on which is provided a computer code for providing a network service, whereas claim 42 is directed to a network system for providing a network service. Claim 42 further recites means for promoting by the server the second member of the standby group from standby status to active status such that the second member of the standby group provides the network service by handling packets destined for the shared non-ATM network address. It is obvious to promote the second member of the standby group of network devices to active status since it has already been identified as the device to provide the service and it also obvious that the second member would be now handling the packets destined for the shared non-ATM network address now that the second member is in active status instead of the first member.

The dependent claims 2, 4-14, 16-19, 21-22, 25-32, 34-41, and 43-53 are obvious variants of claims 2, 4-14, 16-19, 21-22, 25-32, 34-41, 40, 14, 14, 9, 8, 14, 22, 22, 22, and 55, respectively of U.S. Patent No. 6,618,377.

Response to Arguments

3. Applicant's arguments, see Remarks on pg. 11-14, filed 8/11/2008, with respect to the rejection(s) of claim(s) 1-2 and 4-53 under 35 USC § 102 and 35 USC § 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a nonstatutory obviousness-type

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double patenting rejection is made in view of U.S. Patent No. 6,618,377 as detailed above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Sol whose telephone number is (571)272-5949. The examiner can normally be reached on M-F 7:30am - 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on (571) 272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/A. S./
Examiner, Art Unit 2419

/Wing F. Chan/
Supervisory Patent Examiner, Art Unit 2419
11/19/08